IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 158 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL KANTILAL VITTHALDAS

Versus

STATE OF GUJARAT

Appearance:
MR AMIT C NANAVATI for Petitioners
MR ARUN D OZA, ld.Govt.Pleader with MR MUKESH PATEL, ld.AGP for Respondents

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CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 03/05/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

The petitioners herein claiming to be the owners of the lands situated in the sim of village Kanthravi, Taluka Patan, Dist. Patan, have filed this Special Civil Application with the prayer that the respondents be directed to declare the award on the application filed by the petitioners under Sec.28-A of the Land Acquisition Act, 1894 and make payment of compensation of the award amount to the petitioners immediately.

2. The lands of the petitioners were sought to be acquired for the purpose of Manud-Kanthravi road project. In the Land Acquisition Case No.74 of 1983, the Special Land Acquisition Officer No.2, Mehsana passed an order on 21st May 1988 acquiring the lands in question and also ordered for award of the compensation. The petitioners herein did not prefer any application for reference under Sec.18 but other land owners whose lands had also been acquired under the same notification in the same land acquisition proceedings, preferred applications seeking reference under Sec.18 of the Land Acquisition Act. The Land Acquisition Reference Cases Nos.1076 to 1095 of 1988 had been decided by the Reference Court, i.e. 2nd Jt.District Judge, Mehsana, who passed the order on 26th Dec.1994, awarding additional compensation at the rate of Rs.7/- and Rs. 8/- per sq.mtr. of land along with other statutory benefits.

3. The petitioners herein had accepted the amount of compensation as ordered by the Special Land Acquisition Officer under protest. The petitioners thereafter filed application under Sec.28-A of the Land Acquisition Act on 23rd March 1995 within the limitation. The petitioners have come to this Court with the grievance that despite their application dated 23rd March 1995 moved under Sec.28-A, the same is not being decided for all these years despite the fact that the Special Land Acquisition Officer had sent a letter dated 9th Jan.1996 to the petitioners for finalising the application under Sec.28-A and the petitioners had made appearance before him on 22nd Jan.1996. The petitioners have also referred to a circular dated 10th March 1997 issued by the Addl.Chief Secretary, Revenue Department, Govt. of Gujarat, in the matter of fixing the time limit in deciding the applications under Sec.28-A of the Land Acquisition Act.

4. This Special Civil Application dated 2nd Dec.2000 filed before this Court on 9th Jan.2001 came up before the Court on 10th Jan.2001 on which date, the notice was issued making it returnable on 22nd Jan.2001 as to why this Special Civil Application may not be admitted and finally disposed of at the admission stage itself. We, therefore, consider this order as the notice for final disposal and as good as Rule.

5. After seeking time on the returnable date, i.e. 22nd Jan.2001, and again on 7th Feb.2001, when the matter came up before the Court on 7th March 2001, a statement was made by the learned Asstt.Govt. Pleader that in this case, the draft award had already been sent for approval of the State Government and he sought time. Thereafter,

on 9th April 2001, time was again sought to take instructions from the Government as the draft award was pending with the Government for approval. The matter was posted for 16th April 2001 with the order that the concerned officer shall remain present before the Court along with the record. On 16th April 2001, it was noticed that despite sufficient opportunities, the respondents have failed to file any reply and comply the Court's order dated 9th April 2001 and the concerned officer did not remain present. Therefore, on 16th April 2001, the concerned Special Land Acquisition Officer from Mehsana was directed to remain present before the Court along with the record on 23rd April 2001 and the learned Asstt.Pleader was also directed to verify the factual position from the concerned Department of the Government as to what had happened to the draft award which had been sent for approval and it was also ordered that in case the concerned Special Land Acquisition Officer does not remain present before the Court on the next date, i.e. 23rd April 2001, a serious view of the matter shall be taken and appropriate orders shall be passed and the parties were directed to come ready for final disposal of the matter as already ordered on 10th January 2001. On 23rd April 2001, it was given out by learned Asstt.Govt. Pleader before the Court that the concerned Special Land Acquisition Officer of Mehsana, Mr.D.J.Baranda posted at Patan was never informed by the office of the Govt. Pleader about the contents of the order dated 16th April 2001, but the contents of this order had now been made known to him telephonically and he would be appearing before the Court on 25th April 2001 along with the necessary records. The matter was posted for 25th April 2001. On 25th April 2001, keeping in view the contents of the Revenue Department's circular dated 10th March 1997, the respondents were directed to place on record the details as to who were the officers responsible for not deciding the petitioners' application under Sec.28-A and for what reasons the said application remained pending uptil now since 23rd March 1995. The Special Land Acquisition Officer, Mehsana, Mr.D.J.Baranda posted at Patan was personally present in this Court on 25th April 2001 and he wanted to file his reply as to why the application under Sec.28-A had remained pending for all the time and who was responsible for the same. On behalf of the Revenue Department, it was pointed out by the concerned Section Officer Mr.J.N.Parmar that Mr.S.C.Sanehi, Secretary, Land Reforms was the concerned officer and that he too shall have to file his reply as to why the application under Sec.28-A had remained pending and who was responsible for not deciding the application since 23rd March 1995. It was also ordered

that Mr.Sanehi shall also place the necessary facts before this Court as to what steps have been taken by the concerned Department with regard to implementation of the Addl.Chief Secretary's Circular dated 10th March 1997. A copy of this order had also been sent to the Addl.Chief Secretary, Revenue Department, Govt.of Gujarat.

6. With all these efforts on different dates, at last on 2nd May 2001, the affidavits were filed by Mr.D.J.Baranda, Special Land Acquisition Officer and Mr.K.L.Vanker, Dy.Secretary of Revenue Department as also an affidavit of Mr.R.G.Patel, the concerned Exe.Engineer of the Roads and Buildings Department.

7. We have gone through the replies as have been filed before us and we are not at all satisfied with the explanation which has been given for not deciding the application under Sec.28-A. Learned Govt.Pleader Mr.Arun D.Oza submitted before us that it is a fact that the application under Sec.28-A had been filed on 23rd March 1995, but he has pointed out that against the order passed by the Reference Court on 26th Dec.1994, First Appeals Nos.5900 to 5945 of 1995 had been preferred before the High Court by the State of Gujarat with Special Civil Application No.678 of 1996 and these appeals were dismissed on 18th Feb.1999 and it was conveyed to the concerned Special Land Acquisition Officer by the Revenue Department as late as on 7th April 2000 that the Government had now taken the decision not to challenge the order dated 18th Feb.1999 passed by the High Court and to accept the same and do the needful, but nothing was done. Thereafter, the application under Sec.28-A was taken up and the notice to the claimants' Counsel was issued for the date of 1st Dec.1999 and the draft award was submitted on 9th Feb.2000. As the award was for grant of more than Rs.1 lakh, it was sent to the Revenue Department on 15th Feb.2000. Again on 16th May 2000, certain clarification was sought from the Special Land Acquisition Officer, who sent the clarification on 3rd Aug.2000. Yet some further clarification was sought on 9th Oct.2000 from the Special Land Acquisition Officer, who gave such clarification on 24th Oct.2000. The Revenue Department yet sought further clarifications on 8th Dec.2000 and the same were also made good by the Special Land Acquisition Officer on 2.1.2001. However, the award has yet not been signed, but it is stated that the award has already been signed now by the Under Secretary, and thereafter the file had been placed before the Dy. Secretary and shall be placed before the Secretary, Revenue Department for approval. It was then stated by the learned Govt. Pleader under instructions

from the officers who are present in the Court that the award shall now be made within a period of one week and the due amount of compensation shall be paid to the claimants within a period of one month thereafter and accordingly within this time schedule, the payment of the amount under the award shall be paid to the claimants latest by 10th June 2001.

8. Thus, so far as the petitioners' grievance about deciding the application under Sec.28-A is concerned, it stands redressed and may be finally redressed by 10th June 2001, but the question which has engaged our attention is about the requirement of following the Revenue Department's circular dated 10th March 1997 which is not being implemented in the letter and spirit and it is clear that this circular is being complied with only in breach of it. The reading of this circular would show that this circular was issued with a wholesome purpose in public interest so that the State exchequer may not have to suffer the payment of heavy amount of interest on the amount of compensation awarded by the Courts and keeping in view this wholesome purpose - the laudable purpose and in conformity with the requirement of public interest, it was clearly stated in para 2 of this circular by way of standing instructions to all concerned that the cases in which the power rests with the Land Acquisition Officer itself, the award be accepted and the claimants be paid the compensation within a period of three months; in para 3 while giving reference to the Revenue Department's earlier letter dated 19th Oct.1985, it was also mentioned that the cases in which the approval of the higher officer or the Government is necessary, even in such cases the application under Sec.28-A must be sent by the concerned authorities within a period of three weeks for approval from the date of the application and in such cases, within a period of six months the award be accepted and the compensation be paid. It was further held out in this circular that the time schedule fixed in this circular is to be strictly followed and any delay in complying these directions shall be treated as misconduct and the officers who are responsible for causing the delay shall be liable to disciplinary action and departmental inquiry. In para 5 of this circular, it was mentioned that despite this, if there is any delay on the part of the concerned Land Acquisition Officer, or any delay is noticed, the liability shall be fixed so that the amount of interest paid may be recovered from the salary of the concerned officer. It was further emphasised that the cases of applications under Sec.28-A shall be monitored by the concerned Collectors and the same shall be taken up for consideration every month and

the officer causing any delay in such cases shall be subjected to the disciplinary action.

9. Learned Govt. Pleader has pointed out that the appeals decided against the order which had been passed by the Reference Court was only on 18th Feb.1999 and till that date, there was no question of passing any award under Sec.28-A on the basis of the order passed by the Reference Court and therefore, according to him, the delay from 23rd March 1995 to 18th Feb.1999 stands explained. It is not given out before us that the Reference Court's order had been stayed by the High Court or not, but in any view of the matter, even if we accept this submission made by learned Govt. Pleader that the time taken upto the date the appeals were decided cannot be treated as delay, we find that the explanation which has been given for the period subsequent to 18th Feb.1999 is not at all justified and there is no lawful justification whatsoever. One fails to understand that merely because the Government had accepted the Reference Court's order on 7th April 2000 how the period between 18th Feb.1999 to 7th April 2000 can be said to have been explained. Basically, the requirement of seeking approval by the higher authority or the Government is not the requirement under the Land Acquisition Act itself. Faced with this situation, Mr.Oza, learned Govt. Pleader invited our attention to the Circular No.LAQ-2284-2301-GH dated 15th Feb.1996 issued by the Revenue Department of Govt. of Gujarat, and yet another order dated 29th Jan.1986 issued by the Roads and Buildings Department. We have gone through these Circulars and even according to these circulars, the procedure of taking the approval of the higher authority or the Government is applicable only under Sec.11 of the Land Acquisition Act and there is no circular about the awards which are to be passed under Sec.28-A. Learned Govt.Pleader has also placed reliance on a decision in the case of U.P.State Industrial Development Corpn. v. State of U.P. and ors., reported in (1995) 2 SCC 766 wherein the Supreme Court has held on the question of re-determination of compensation in case of appeal by the State against enhancement of compensation by the District Judge pending before the High Court that the Collector/Land Acquisition Officer was to keep the applications pending till the disposal of the appeal. On the basis of this decision, it may be taken that the delay upto 18th Feb.1999 has been explained, but the explanation beyond 18th Feb.1999 is not at all worth acceptance and action has to be taken against the concerned officers on account of whose inaction and negligence the matter remained pending.

10. In this view of the matter, we hereby allow this Special Civil Application with the direction to the respondents to finalise the award within a week from today without waiting for the certified copy of the order and also pay the due amount of compensation to the petitioners latest by 10th June 2001. We further direct that the details be placed before this Court with regard to the employees and officers who are responsible for not carrying out the directions issued in the circular of the Addl.Chief Secretary of the Roads and Buildings Department dated 10th March 1997. The liability with reference to the period and the amount of interest which the State exchequer has to suffer shall be fixed and such statement and the reports shall be placed before this Court on 16th June 2001.

11. This Special Civil Application is hereby allowed as above and the Rule is made absolute. Put up for compliance report on 16th June 2001.
Direct service is permitted.

(M.R. Calla, J.)

(D.H.Waghela, J.)
Sreeram.